were identical,[11] and to allow the secured creditor to recover his *pro rata* share on his debt as it existed at the time of the proof and allowance of his claim seems a sounder rule.

VALIDITY OF STATE BONDS REDEEMED BEFORE MATURITY AND THEREAFTER ILLEGALLY PUT INTO CIRCULATION. — A peculiar situation arises when a negotiable instrument lawfully issued by a government and redeemed before maturity, but not destroyed or cancelled,[1] is later stolen and comes into the hands of a holder in due course. In the case of ordinary negotiable paper originally valid, a holder in due course has full title unaffected by previous payment [2] or voluntary reissue [3] on the part of the original obligor. Moreover, securities issued and redeemed by an individual,[4] a private corporation,[5] or a school district,[6] and without the consent of the maker put into circulation again before maturity, have been held valid, on the ground that the maker must suffer for his lack of diligence in failing to destroy the instrument. This rule should also apply to state bonds,[7] for when a sovereign government undertakes to deal in commercial paper, it assumes the ordinary commercial responsibilities; [8] indeed, it is to the interest of a borrowing state that *bona fide* purchasers of its paper should be protected. But the holder in due course of a Virginia bond which had been redeemed and stolen from the treasury, was considered to have no claim against the state,[9] because, it was said, surrender extinguishes the vitality of such an instrument,[10] delivery is essential to execution,[11] and there was no valid redelivery. Even where this theory that redemption involves extinction is plainly inapplicable, as in the case of public securities called in to be kept as a special fund, the state, having the power to abrogate the law merchant provided no vested right be impaired, may, while holding such securities, declare them void, and thereby destroy forever the negotiability without changing the actual appearance of the paper; [12] the public records in such case give sufficient notice to avoid estoppel by recitals or negligence. Accordingly, it might be argued that a taker of state bonds has constructive notice of previous legislation providing for redemption before maturity,

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[11] See Merrill *v.* Nat'l Bank, 173 U. S. 131.

[1] If the cancellation is erased, it is void, according to the stricter view, on account of the material alteration, apart from statute. District of Columbia *v.* Cornell, 130 U. S. 655. But see Knight *v.* Lanfear, 7 Rob. (La.) 172.

[2] Burbridge *v.* Manners, 3 Camp. 193.

[3] Morley *v.* Culverwell, 7 M. & W. 174. *Contra*, Beebe *v.* Real Estate Bank, 4 Ark. 546.

[4] Ingham *v.* Primrose, 7 C. B. (N. S.) 82. The tearing of the bill in half was not there a cancellation.

[5] Rockville Nat'l Bank *v.* Citizens' Gaslight Co., 72 Conn. 576.

[6] Fogg *v.* School District, 75 Mo. App. 159. *Contra*, Board *v.* Sinton, 41 Oh. St. 504.

[7] *Cf.* California *v.* Wells, Fargo & Co., 15 Cal. 336.

[8] United States *v.* Barker, 12 Wheat. (U. S.) 559.

[9] Branch *v.* Commissioners, 80 Va. 427.

[10] *Cf.* Bardsley *v.* Sternberg, 17 Wash. 243.

[11] Germania Savings Bank *v.* Suspension Bridge, 73 Hun (N. Y.) 590. *Contra*, Cooke *v.* United States, 91 U. S. 389; Worcester, etc., Bank *v.* Dorchester, etc., Bank, 10 Cush. (Mass.) 488. But these were cases respectively of treasury notes and bank-bills, which may be deemed more in the nature of currency.

[12] Pugh *v.* Moore, 44 La. Ann. 209.

though not apparent on the face of the instrument, and is thereby put on his guard, and therefore becomes subject to the defense of previous redemption. Another possible argument is that a redeemed public security cannot be again redeemable if thereby the lawful limit of indebtedness would be exceeded.[13] This objection, however, would hardly arise under a constitution which expressly permits securities to be issued for the redemption of "evidence of indebtedness."

Recently in South Carolina, where such a constitutional provision exists,[14] bonds were issued under a statute which provided that the bonds might be exchanged before maturity for certificates, and that redeemed paper was to be recorded, cancelled, and destroyed. It was held by the Supreme Court of South Carolina that the holder in due course of one of these bonds, which had been redeemed and stolen from the treasury before cancellation, could by *mandamus* compel the state treasurer to redeem the bond a second time. *Ehrlich* v. *Jennings*, 58 S. E. 922. Here the reference to the statute on the face of the bond notified the taker of its redeemability; but he had a right also to infer from the statute that no redeemed bond would escape destruction. The majority of the court adopts the better doctrine that a government security may be valid, though redeemed and unlawfully reissued. In this particular case, however, a contrary result might well have been reached, on the ground that the holder of the bond by bringing *mandamus* under the funding statute, submits to the grace of that statute,[15] and his rights depend not on the law of negotiable instruments, but on the question whether the legislature intended that bonds such as his should be refunded.

ASSUMPSIT TO COLLECT A TAX. — Statutes creating new taxes generally provide a remedy for non-payment by giving the state or collector the right to distrain or sell the property taxed, or by imposing a fine. Where the statute provides no remedy, or the remedy provided is for some reason ineffectual, the question arises whether the state or collector may bring *assumpsit* to collect the tax. The answer depends on the fundamental nature of a tax. Clearly it is not a debt;[1] for it does not arise from any contractual relation, express or implied. Nor has a tax any of the incidents of a debt: it does not draw interest;[2] is not subject to attachment;[3] is not available as a set-off;[4] cannot be proved in bankruptcy;[5] and is not assignable.[6] Similarly a statute doing away with imprisonment for debt does not prevent arrest for failure to pay a tax.[7] Nor is a tax, even after assessment, a judgment.[8] "In a very broad sense," said Shaw, C. J., "a tax is a

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[13] Board *v.* Sinton, *supra.*

[14] Const. of 1895, Art. 10, § 7.

[15] *Cf.* Sun, etc., Co. *v.* Board, 31 La. Ann. 175. See dissenting opinion in Pugh *v.* Moore, *supra.*

[1] Camden *v.* Allen, 26 N. J. L. 398.

[2] Shaw *v.* Peckett, 26 Vt. 482.

[3] Meriwether *v.* Garrett, 102 U. S. 472.

[4] Home Savings Bank *v.* Boston, 131 Mass. 277.

[5] *In re* Duryee, 2 Fed. 68.

[6] Hinchman *v.* Morris, 29 W. Va. 673.

[7] Appleton *v.* Hopkins, 5 Gray (Mass.) 530.

[8] Marye *v.* Diggs, 98 Va. 749. But see State *v.* Georgia Co., 112 N. C. 34; State *v.* M. & C. R. R. Co., 14 Lea (Tenn.) 56.